A.F.R.

Reserved

CRIMINAL REVISION No. 582 of 2016

Dinesh Kumar Yadav

Vs

State Of U.P. & Anr.

Counsel for Revisionist:- Lalji Yadav

Counsel for Opposite Party:- Mrs. Madhulika Yadav, AGA

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Hon'ble Dilip B. Bhosale, Chief Justice
Hon'ble Aditya Nath Mittal, J.
Hon'ble Rajan Roy, J.

(Per Hon'ble Dilip B Bhosale, CJ)

The order of reference dated 2nd August, 2016, which has occasioned the constitution of this larger Bench, was passed by one of us (Rajan Roy, J) in the instant Criminal Revision in view of the divergence of opinion/views expressed by coordinate Benches of this Court on the question, whether a revision against the order passed in appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act, 2005') is maintainable? The questions referred to this Bench read thus:

> "i) whether a revision under Section 397/401 of the Code of Criminal Procedure, 1973 is maintainable before the High Court challenging an order passed by the Court of Sessions under Section 29 of the Act 2005?
>
> ii) whether the decisions in the case of **Nishant Krishna Yadav** (Criminal Revision No.4016 of 2015) and **Manju Shree Robinson and Ors. Vs State of U P and Ors.** (Writ Petition No.7926 (MS) of 2015) lay down the law correctly on the question of maintainability of a Revision under Section 397/401 of the Code of Criminal Procedure

> before the High Court against an order passed by the Court of Sessions under Section 29 of the Act 2005 in view of the earlier decisions of the Supreme Court in the case of **Thakur Das Vs State of Madhya Pradesh and Anr.,** (1978) 1 SCC 27; **National Sewing Thread Co. Ltd., Chidambaram Vs James Chadwaick and Bros.,** AIR 1953 SC 357; **Maharashtra State Financial Corporation Vs Jayee Drugs & Pharm**, (1991) 2 SCC 637 ; and **ITI Ltd. Vs Siemens Public Communications Networks Ltd.**, (2002) 5 SCC 510 ?"

2. The factual matrix, that occasioned the reference, to the extent that is necessary, is as under:

2.1 A Criminal Revision, bearing No. 582 of 2016, by one Dinesh Kumar Yadav against the State of Uttar Pradesh & Anr. was filed under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'Cr P C') assailing an order dated 08.04.2016 passed by the Additional Sessions Judge, Pratapgarh in Criminal Appeal No. 66 of 2015 filed by husband under Section 29 of the Act, 2005. The appeal was preferred against the order dated 15.07.2015 passed by learned Magistrate under Section 20 (3) of the Act, 2005, granting an interim maintenance of Rs. 2,000/- to the wife.

2.2 In the course of hearing of the revision, an objection was raised by learned Government Advocate, as to the maintainability of the revision. While dealing with the objection, learned Single Judge noticed the conflicting judgments rendered by different coordinate Benches on the question, including the judgments in **Nishant Krishna Yadav** (supra) and **Manju Sree Robinson** (supra), referred

to in the second question. It appears that the judgments, holding that a revision under Sections 397/401 of Cr P C against the order in appeal under Section 29 of the Act, 2005 is not maintainable, were mainly based on the observations made by the Supreme Court in **Shalu Ojha Vs. Prashant Ojha**, (2015) 2 SCC 99. It was further noticed that in **Chiranjeev Kumar Arya Vs. State of Uttar Pradesh & Anr.** (Criminal Revision No.879 of 2015) and **Prabhu Nath Tiwari & Anr. Vs. State of Uttar Pradesh and Anr.** (Criminal Misc. Writ Petition No.15337 of 2012), learned Single Judges, while dealing with the question, held that a revision would be maintainable before the High Court against an order passed in appeal under Section 29 of the Act, 2005. While expressing such a view, it was observed that the provisions of the Act, 2005 do not exclude the applicability of the provisions of Cr P C. It was further observed that in *Shalu Ojha* (supra), the question, which has been referred to this Bench, did not directly fall for consideration of the Supreme Court and, therefore, the decision therein does not pose a hurdle in answering the question referred in the affirmative.

3. Before we proceed further, it would be relevant to observe that though objection was raised on behalf of the State as to the maintainability of the revision, while placing written propositions of law before us, the State has taken a stand that a revision is maintainable.

4. At the very outset, we would like to have a close look at the judgments mentioned in the second question referred for our consideration. In **Nishant Krishna Yadav** (supra), a learned Single Judge of this Court, relying upon the judgment in **Shalu Ojha** (supra), held that a criminal revision against an order passed under Section 29 of the Act, 2005 is not maintainable. It would be relevant to reproduce paragraphs 9 to 12 of the judgment, which are relevant for our purpose:

> "9. So long as the submissions raised by the learned counsel for the revisionist that Hon'ble Supreme Court while dealing with the case of *Shalu Ojha* (supra) did not consider the scope of provisions of Section 28 of the Act is concerned, I am not in agreement with the submissions. As is clear from the facts of the case of *Shalu Ojha* (supra), orders passed by the learned Sessions Judge had been challenged by way of application under Section 482 Cr P C and under Article 227 of the Constitution of India. **Hon'ble Supreme Court after making of brief survey of the provision of Act i.e. Sections 3, 12, 18, 20, 21, 23 and 29 of the Act laid down that no further appeal or revision is provided to the High Court or to any other higher court against the order of the sessions court under Section 29 of the Act.**
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> 10. **The view expressed by the Hon'ble Supreme Court in *Shalu Ojha* (supra) case is not casual in nature but was observed while dealing with the issue relating to the controversy arisen in the Act and the same is binding upon all the courts subordinate to the Hon'ble Supreme Court.** It cannot be said that the view taken by the Hon'ble Supreme Court is not correct interpretation of the provisions of the D V Act. Looking to the law laid down by the Hon'ble Supreme Court in the case of *Shalu Ojha* (supra) with deepest regard I am not in agreement with the view expressed by the Kerala High Court in the case of **Baiju and another** (supra) and the Madras High Court in **K. Rajendran** (supra)

> case. Submissions raised by the learned counsel for the revisionist regarding maintainability of the present revision is not acceptable and the criminal revision is not maintainable.
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> 11. So far as the merit of the case is concerned, since revision is not maintainable, therefore, I do not find any necessity to discuss the merit of the case.
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> 12. In view of the above discussion, the Criminal Revision being not maintainable is dismissed at this stage itself."
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> (Emphasis supplied)

5. In **Manju Sree Robinson** (supra), a learned Single Judge of this Court, relying upon *Shalu Ojha* (supra), differing from the view taken by another learned Single Judge in **Prabhu Nath Tiwari** (supra), held that the only remedy against an order passed under Section 29 of the Act, 2005, is by way of a writ petition or an application under Section 482 of Cr P C. Since the jurisdiction of this Court under Article 226 of the Constitution is an extraordinary jurisdiction, the aggrieved party has a right to seek remedy under Section 482 of Cr P C. The relevant observations in Manju Sree Robinson (supra) read thus:

> "Having heard learned counsel for the parties and having gone through the case laws relied upon by the parties, I find that the latest pronouncement of the Hon'ble Supreme Court is that against the order passed by the Sessions Judge in appeal, no further appeal or revision is maintainable. In these circumstances, **the only remedy available is to file writ petition or an application under Section 482 Cr.P.C. Since the jurisdiction of this Court under Article 226 of the Constitution of India is an extraordinary jurisdiction, the aggrieved party has a right to seek remedy under Section 482 Cr.P.C., therefore, in my opinion application under Section**

> **482 Cr.P.C. would be maintainable.** At this stage Mr. Lalit Shukla submits that the writ petition may be treated as an application under Section 482 Cr.P.C., to which learned counsel for the opposite party no.2 submits that this writ petition should be dismissed and liberty be given to the petitioners to file application under Section 482 Cr.P.C. Since this exercise would amount to further delay in the matter, therefore, in the interest of justice, the petitioners are permitted to convert this writ petition into application under Section 482 Cr.P.C.
>
> Let necessary amendment be made in the memo of the writ petition during the course of day.
>
> Office is directed to allot regular number of Criminal Misc. Case (under Section 482 Cr.P.C.).”
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> (Emphasis supplied)

6. In **Chiranjeev Kumar Arya** (supra), another learned Single Judge, after considering the judgment in **Shalu Ojha** (supra), the provisions of the Act, 2005, the relevant provisions of Cr P C as also the judgment of the Supreme Court in **Thakur Das** (supra) and the judgment of a Division Bench of this Court in **Shafaat Ahmad Vs. Smt. Fahmida Sardar,** AIR 1990 All. 182, so also the judgment of the Kerala High Court in **Baiju Chandran Nair & Anr. Vs. Latha Balan Nair & Anr.**, 2011 Crl. LJ 4536, and the judgments in **Manju Sree Robinson** (supra) and **Nishant Krishna Yadav** (supra), held that a revision under Section 397/401 of Cr P C would be maintainable before the High Court against a judgment and order passed by the Court of Sessions under Section 29 of the Act, 2005. The relevant observations made by the learned Single Judge in paragraphs 20, 21 and 22 read thus:

> "20. In the case of *Shalu Ojha vs. Prashant Ojha (supra)* there was a protection order passed by Magistrate awarding Rs. 2.5 lacs towards monthly maintenance, an appeal was preferred under Section 29 of the Act. In appeal an interim order was passed by Additional Sessions Judge. Appeal was dismissed for non compliance of the interim order. Matter was taken to High Court and ultimately to Apex Court. **No question whether order passed in appeal was revisable under Section 397 Cr.P.C. was before the Court. It has been stated in the above case that in D.V. Act no further appeal or revision has been provided to the High Court. Relying upon these observations this Court (Hon'ble Mahendra Dayal, J.) has held that no further appeal or revision is maintainable.** Relevant paragraph of the judgment passed in **Writ Petition (M/S) No. 7926 of 2015 (Mrs. Manju Sree Robinson & 2 others vs. State of U.P. and others).....**
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> 21. **Hon'ble Apex Court has only said that in D.V. Act no further appeal or revision has been provided.**
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> 22. **Code of Criminal Procedure has not been excluded in the D.V. Act. Since, High court's supervisory power of revision which it can exercise suo moto against the order passed by subordinate criminal courts i.e. Magistrate or Sessions Judge has not been taken away**, this court is of the view that observation made by Apex Court has been wrongly interpreted and the view taken by Hon'ble Manoj Misra, J. in the case of Prabhu Nath Tiwari (supra) appears to be a correct law. Division Bench of this court referred above was not placed before Hon'ble M. Dayal, J. Consequently, this Court is of the opinion that Sessions Judge being subordinate/inferior criminal court to the High court and there being no specific exclusion of the Cr.P.C., the revisional power of the High Court, against the order passed under Section 29 of the D.V. Act are intact and unaffected. In view of above, preliminary objection raised by Sri Pankaj Tiwari is overruled."
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> (Emphasis supplied)

7. In **Prabhu Nath Tiwari** (supra), yet another Single Judge of this Court, held that a revision under Section 397/401 of Cr P C

before the High Court is maintainable against a judgment and order passed under Section 29 of the Act, 2005 and, accordingly, he dismissed the writ petition keeping the remedy of revision available to the petitioners.

8. It would also be relevant to notice, how a similar question was considered and dealt with by Kerala High Court in **Baiju Chandran Nair Vs Latha Balan Nair**, 2011 Crl. LJ 4536. In this case, a Single Judge of the Kerala High Court, relying upon the judgment of this Court in ***Shafaat Ahmad*** (supra), held a revision before the High Court to be maintainable against an order passed in appeal under Section 29 of the Act. The relevant extract of the judgment is quoted herein below:-

> "**16.** The next question is whether the judgment of the Court of Sessions in an appeal under Sec. 29 of the Act is amenable to the revisional jurisdiction of the High Court under Sec. 397(1) and 401 of the Code. I stated that the appeal is governed by the provisions of the Code though right of appeal is provided by Sec. 29 of the Act. The Act does not say that judgment of the Court of Sessions is subject to challenge before any other court. Under Sec. 397(1) of the Code, High Court may call for and examine the records of any proceeding before any inferior criminal court. **A Court of Sessions is a criminal court inferior to the High Court for the purpose of exercise of revisional power under Sec. 397(1) and 401 of the Code. Sec. 397(1) of the Code empowers the courts specified therein to call for records of the inferior criminal court and examine them for the purpose of satisfying themselves as to whether a sentence, finding or order of such inferior court is legal, correct or proper or whether the proceedings of such inferior court is regular. The object of conferring revisional power is to give the superior criminal courts supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of**

procedure, neglect of proper precautions or apparent harshness of treatment which has resulted on the one hand in some injury in the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals. The power of revision is supervisory in character enabling the superior courts to call for records of the inferior criminal courts and examine them for the purpose of satisfying themselves that the sentence, finding, order or proceeding of such inferior court is legal, correct or proper. The Allahabad High Court in **Shafaat Ahmad v. Smt. Fahmida Sardar** (AIR 1990 All. 182) considered whether an order under Sec. 3 of the Muslim Women (Protection of Rights on Divorce) Act is revisable under Sec. 397(1) of the Code. The said Court held:

> "The fact that it has not been said in the Act that the order under S. 3 is revisable, is of no consequence. A provision need not be made in every Act and it is sufficient if it is provided in one Act. The Act provides that the order is to be passed by the Magistrate and the Criminal P.C. provides that the order of the Magistrate can be revised by the High Court. The Act does not exclude the application of the Criminal P.C. So Criminal P.C. has to be given effect and the order passed by the Magistrate under Sec. 3 of the Act becomes revisable in view of the provisions in the Criminal P.C."

Judgment of the Court of Sessions in an appeal though preferred under Sec. 29 of the Act being of an inferior criminal court, is revisable by the High Court in exercise of its power under Secs. 397(1) and 401 of the Code. Petitioners have to take recourse to that remedy. In the circumstances, I am not inclined to exercise the extraordinary jurisdiction conferred on this Court under Sec. 482 of the Code."

(Emphasis supplied)

9. Before we proceed further, it would be advantageous to have a glance at the judgment of the Supreme Court in **Shalu Ojha** (supra). The proceedings in that case arose from a complaint filed under Section 12 of the Act, 2005, wherein, an order dated 5.7.2012, passed by the learned Magistrate granting an amount of Rs.2.5 lacs towards

monthly maintenance of the wife, was under challenge. Aggrieved by the said order, the husband carried the matter in appeal under Section 29 of the Act, 2005 before the Additional Sessions Judge, who granted a stay of the execution of the order under appeal and directed the husband to pay entire arrears of maintenance due to the wife till presentation of the appeal, within two months. Since this was not complied the wife moved an application for execution. The criminal appeal was dismissed by the learned Sessions Judge for non compliance of interim directions referred to above. Being aggrieved by such order the husband initiated proceedings before the High Court. After some further interlocutory proceedings, which went up to the Supreme Court by way of a S.L.P. (Crl.) Nos. 6509-10 of 2013, which was dismissed, an application was filed being Criminal Misc. Case No. 1975 of 2013 for referring the matter to mediation, which failed. Thereafter, the High Court directed the husband to pay an amount of Rs. 10 lacs in two installments and the execution petition filed by the wife was kept in abeyance. Thereafter, the wife filed an application before the High Court seeking direction to the husband for payment of monthly maintenance in terms of the order of the learned Magistrate dated 05.07.2012. The matter was adjourned several times and no order could be passed by the High Court. In the said background the wife filed Special Leave Petition (Crl.) No. 2210 of 2014 before the Supreme Court which was disposed of on 31.03.2014 by setting-side the interim stay granted by the High Court on the

execution petition filed by her. It was categorically observed that it was open to her to execute the order of maintenance passed by the learned Metropolitan Magistrate. The High Court was requested to dispose of the Appeal of the husband expeditiously. The application of the wife came to be dismissed as not pressed on a statement made by her counsel before the High Court. It is against this that the proceedings were initiated by the wife Shalu Ojha before the Supreme Court by filing S.L.P. (Crl.) No. 6200 of 2014 (Criminal Appeal No. 2070 of 2014).

9.1 In this backdrop, the Supreme Court, before taking any decision in the matter, as observed in para 13 of the judgment, made a brief survey of the Act, 2005 insofar as it was relevant for the purpose of the said case and based thereon made an observation in paragraph 19 as under:-

> "19. **It can be seen from the DV Act that no further appeal or revision is provided to the High Court or any other court against the order of the Sessions Court under Section 29.** It is in the background of the abovementioned scheme of the DV Act that this case is required to be considered. The appellant made a complaint under Section 12 of the DV Act. The Magistrate in exercise of his jurisdiction granted maintenance to the appellant. The Magistrate's legal authority to pass such an order is traceable to Section 20(1) (d) of the DV Act."
>
> (Emphasis supplied)

9.2 In the above case, against the order of the Magistrate an appeal

was filed under Section 29 of the Act, 2005, and thereafter the matter went up to the High Court under Section 482 Cr.P.C. and Article 227 of the Constitution. It was not a case where a revision had been filed before the High Court against an order passed by the Sessions Court under Section 29 of the Act, 2005. The Supreme Court considering the scheme of the Act, 2005 and the powers vested in the Appellate Court under Section 29 opined in para 23 that "in a matter arising under a legislation meant for protecting the rights of women, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant, as on account of it the wife was denied the fruits of the maintenance order even after 2 years of the order." It accordingly allowed the appeal of the wife and issued directions for payment of maintenance allowance. A careful perusal of the judgment of the Supreme Court in **Shalu Ojha** (supra) shows that the first question, that has been referred to the Full Bench, did not directly or substantially fall for consideration of the Supreme Court.

10. In order to provide a remedy for the protection of women who have been victims of domestic violence and to prevent occurrence of incidents of domestic violence in society, the Act was introduced by the Parliament which received the assent of the President of India on 13.9.2005 and, accordingly, it came on the Statute Book as The Protection of Women From Domestic Violence Act, 2005 (43 of

2005). This Act provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

11. The Act, 2005 defines an 'aggrieved person' to mean any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The definition of 'domestic relationship' is wide enough to cover not only a husband and wife but any two persons related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

11.1 Section 3 of Chapter II of the Act, 2005 defines 'domestic violence'. Chapter III of the Act, 2005 deals with powers and duties of Protection Officers, Service Providers, etc. Since we are not concerned with this Chapter for addressing the questions, we are not making further reference to the provisions contained in this Chapter.

11.2 Chapter IV of the Act, 2005 is relevant for our purpose, which consists of Sections 12 to 29. This Chapter provides the procedure for obtaining orders of relief. In other words, it provides a remedy to an aggrieved person against domestic violence under Sections 12, 18, 19, 20, 21, 22 and 23. Section 12 provides for an application to

Magistrate seeking one or more reliefs under the Act, 2005. Section 18 empowers the Magistrate, after granting the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from committing an act as contemplated in clauses (a) to (g) of this Section. Section 19 empowers the Magistrate to pass a residence orders, whereas Section 20 to grant monetary relief in favour of the aggrieved person. Section 21 deals with custody order, while Section 22 deals with compensation order and Section 23 empowers the Magistrate to grant interim or ex parte order.

11.3 Section 28 provides that proceedings under the Act, 2005 relating to application and orders for reliefs and offence of breach of a protection order or interim protection order by the respondent shall be governed by the provisions of Cr P C. Sub-section (2) of Section 28 envisages that the Court may lay down its own procedure for disposal of applications for any relief or for grant of ex parte orders. Section 29 provides that an appeal from an order made by the Magistrate shall lie to the Court of Sessions within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent whichever is later. It would be relevant to reproduce Sections 28 and 29 to understand the purport of these provisions.

Sections 28 and 29 read thus:

> "**28. Procedure –** (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).
>
> (2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.
>
> **29. Appeal-** There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

11.4 Section 36 in Chapter V of the Act, 2005 is also relevant for our purpose, which stipulates that the provisions of the Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. Section 36 reads thus:

> **36. Act not in derogation of any other law.-** The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

11.5 It would also be relevant to have a glance at Sections 4, 5, 397 and 401 of Cr P C, which read thus:

> **4. Trial of offences under the Indian Penal Code and other laws.**
>
> (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter

contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

397. Calling for records to exercise powers of revision. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

401. High Court' s Powers of revisions.

(1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

11.6 It is against this backdrop that we now proceed to deal with the questions that are referred to for our consideration. It can be seen from the Act, 2005 that no further appeal or revision is provided for before the High Court or any other Court against the order of the Sessions Court under Section 29, as observed by the Supreme Court in **Shalu Ojha** (supra). The Supreme Court in that case had no occasion to

consider whether a further remedy by way of revision can be taken under Section 397/401 of Cr P C, assailing an order of the Court of Sessions passed under Section 29 of the Act, 2005. In other words, the question of maintainability of a revision before the High Court under the provisions of Cr P C, assailing an order under Section 29 of the Act, 2005, was neither specifically raised, nor considered nor addressed/decided.

12. It is trite that the *ratio decidendi* is to be understood on a reading of the entire judgment keeping in mind the issues involved, argued, considered and decided. Every observation made in a judgment is not part of its ratio. It is true that even a general observation or obiter dicta of the Supreme Court is to be given considerable weight. We have no doubt that the Act, 2005 does not prescribe any further appeal or revision to the High Court or any other Court against an order of the Sessions Court under Section 29 specifically and this is evident from a bare perusal of the Act, but, it is also a fact that the provisions of Section 397 of Cr P C were not taken into consideration in the aforesaid judgment, obviously for the reason that the maintainability of a revision under the said provision was not an issue involved therein. Reference may be made in this regard to a judgment of the Bombay High Court rendered by one of us (Dilip B Bhosale, J) in **Shailaja A. Sawant (Dr) Vs Sayajirao Ganpatrao Patil,** 2004 (5) Bom. CR 548, In that case, after considering several

judgments of the Supreme Court, the distinction between a *ratio decidendi* and *obiter dicta* as also its precendenciary value was considered, the relevant extract of which is quoted herein below:-

> "**18.** Thus, the law is now well settled as to what a ratio decidendi is. An obiter dictum as distinguished from ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. The law, which will be binding under Article 141 of the Constitution of India extends to all observations of the points raised and decided by the Court in a given case. The only opinion, which would be binding, would be an opinion expressed on a question that arose for determination of a Supreme Court. "Obiter dicta", therefore, as observed by the Supreme Court in State of Orissa v. Sudhansu Shekar Misra (supra), must be distinguished from casual observations made in a judgment on a point not calling for decision and not argued before the Court. The observation made in passing with reference to a general scheme of the Act would not constitute an obiter dicta which is binding upon this Court on questions of interpretation. A question which never arose before the Supreme Court, which was never argued, which was never considered and which was never decided could not be, therefore, termed as "obiter dicta". In the present case, the Supreme Court in the case of Dr. J. J. Merchant was not considering the issue as to whether the Court has power to extend the time beyond the period prescribed under the provisions of Section 13 of the Consumer Protection Act or under Order 8, Rule I of the Civil Procedure Code for that matter. Arguments were not advanced in that case on the question involved in the present writ petition or the question that was involved in the case of Topline Shoes Ltd. (supra). Therefore, in my opinion, the observations made by the Apex Court in Dr. J. J. Merchant case will not come in my way for deciding the issue whether the trial Court has power to extend the time for filing written statement prescribed under Order 8, Rule 1."

13. It is also relevant to mention that the judgment of the Supreme Court in ***Shalu Ojha*** (supra) was considered by the learned Single

Judge in **Chiranjeev Kumar Arya** in a judgment dated 29.06.2016 and a Revision was held to be maintainable, *inter alia*, relying upon an earlier judgment of the Supreme Court in ***Thakur Das (supra).*** The said judgment was carried to the Supreme Court and the S.L.P. filed against it has been dismissed on 12.08.2016. As already noticed earlier, therefore, the proposition laid down therein has attained finality. Thus, our view is supported by this development also.

14. In view of the above discussion, we are of the considered view that the observations of the Supreme Court in ***Shalu Ojha's*** *case* (supra) as contained in paragraph 19 do not tie our hands in considering the questions referred to us as the same did not fall for consideration directly and substantially before the Supreme Court.

15. A perusal of the Act, 2005, specially Section 28 thereof, reveals that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 are to be governed by the provisions of Cr P C, save as otherwise provided in the said Act. The offences under Section 31 are also to be governed by the said Code. Sub-section (2) of Section 28 permits the Court to lay down its own procedure for disposal of an application under Section 12 or under Sub-section (2) of Section 23 notwithstanding anything in Sub-section (1) thereof. Sub-section (2) is not attracted in the present case.

16. Section 36 of the Act, 2005 says that “the provisions of this Act

shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

17. Section 29 of the Act, 2005 provides that "there shall lie an appeal to the Court of Sessions." Section 29 does not indicate the procedure applicable to such proceedings of an appeal. There is no provision in the Act, 2005 which permits the Court to lay down its own procedure for hearing an appeal under Section 29. The Rule making power under Section 37, even if stretched to include the power to make rules of procedure for an appeal under Section 29 by virtue of the generality of the provision contained in Sub-section (1) thereof, none of the parties have placed before the Court any Rules prescribing such procedure for an appeal as aforesaid.

18. The question is what is the procedure prescribed for an appeal under Section 29. After all there has to be some procedure in this regard. The answer lies in the use of the words "there shall lie an appeal to the Court of Sessions." The Court of Sessions referred therein is a Court of Sessions referred in Section 6 read with Sections 7 and 9 of the Cr P C, as the Act, 2005 does not define the said term. It is trite that whenever a remedy is provided before an already established Court, without saying anything more, the procedure ordinarily applicable to such a Court applies for the purposes of such remedy also. Reference may be made in this regard to the pronouncement of the Supreme Court in the case of **National Sewing**

Thread Co. Ltd, Chidambaram (supra), wherein it was observed thus:

> "...The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane L.C. in National Telephone Co. Ltd. vs. Postmaster-General, (1913) AC 546 (A), in these terms:-
>
> > "When a question is stated to be referred to an established court without more, it in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches."
>
> The same view was expressed by Their Lordships of the Privy Council in - Adalkappa Chettiar vs. Chandresekhara Thevar, AIR 1948 PC 12 (B), wherein it was said:
>
> > "Where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorized by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal."

The ratio contained in the said judgment, as quoted hereinabove, applies on all its fours to the present case before us.

19. In **Secretary of State for India Vs. Chellikani Rama Rao**, *AIR. 1916 PC 21,* the question arose as to whether a Letter's Patent Appeal was maintainable from a judgment of a Single Judge rendered in proceedings arising out of Section 76 of the Trade Marks Act. The Supreme Court held that Section 76 of the Trade Marks Act confers a

right of appeal to the High Court "***and says nothing more about it".*** That being so, it held that the High Court has to exercise its other appellate jurisdiction by a Single Judge. Therefore, his judgment becomes subject to appeal under Clause 15 of Letter's Patent Act, "***there being nothing to the contrary in the Trade Marks Act."*** Thus, the procedure applicable to the proceedings before the Single Judge under the Rules of the Court or the Letter's Patent Act was made applicable on the reasoning that the Trade Marks Act prescribed an appeal to the High Court without saying anything more "as regards the procedure to be followed" and there being nothing to the contrary in the Trade Marks Act (excluding any such procedure). This judgment was also considered in ***National Sewing Thread's case*** (supra).

20. These judgments have also been referred and relied upon by the Supreme Court in the case of **Maharashtra State Financial Corporation** (supra), wherein, a similar proposition has been laid down while considering the applicability of the Cr P C to the proceedings before the District Judge under the State Financial Corporation Act, 1951.

21. In the case of **ITI Ltd.** (supra), the question which fell for consideration before the Supreme Court was regarding the maintainability of a revision under Section 115 of the Code of Civil Procedure, 1908 before the High Court against an order passed by a

Civil Court in an appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996, specially, when a Second Appeal was statutorily barred under the Act and the Code of Civil Procedure was not specifically made applicable. Thus, the question was quite similar to the one referred to us. The Supreme Court opined in paragraph 10 as under:-

> "...It is true in the present Act application of the Code is not specifically provided for but what is to be noted is: is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a Civil Court? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable."

21.1 Rendering a concurring judgment in the said case D.M. Dharmadhikari, J of the Supreme Court observed in paragraph 19 thereof thus:

> "...when a special Act on matters governed by that Act confers a jurisdiction on an established court, as distinguished from a persona designata, without any words of limitation, then the ordinary incident of procedure of that court including right of appeal or revision against its decision is attracted..."

21.2 Based on the aforesaid reasoning and following the judgments already referred earlier, the Supreme Court held a revision under

Section 115 of C P C to be maintainable against an order passed under Section 37 of the Arbitration and Conciliation Act, 1996.

22. Further more, in the case of **Thakur Das** (supra) the question which fell for consideration before the Supreme Court was regarding maintainability of a Revision under Section 435 and 439 of the Code of Criminal Procedure 1898 (old Code) against an order passed by the Sessions Judge under Section 6-C of the Food and Essential Commodities Act, 1955 (hereinafter referred to as 'the Act, 1955'). Sections 439 and 435 of the old Cr P C and Sections 397 and 401 of the existing Code of Criminal Procedure, 1973, are in *pari materia,* and, therefore, the question which fell for consideration in the said case was similar to the one referred to us. Under Section 6-C of the Act, 1955 the State Government was empowered to appoint a judicial authority to hear an appeal. The State Government issued a notification appointing the Sessions Judge as Appellate Authority. The Supreme Court on a consideration of the aforesaid issue held that the Sessions Judge exercising power of appeal under Section 6-C of the Act, 1955 would only be the Judge Presiding over the Sessions Court and discharging the functions of that Court constituted under Section 7 and 9 of the Code of Criminal Procedure, 1898. The case at hand is no different and the said observations apply to the present case also. The Supreme Court further held that the Sessions Judge acting as an Appellate Authority under Section 6-C of the Act, 1955 “exercising

judicial power of the State is an authority having its own hierarchy of superior and inferior Court, the law of procedure according to which it would dispose of matters coming before it depending upon the nature of jurisdiction exercised by it acting in judicial manner." Thus, it held that the law of procedure applicable to a Sessions Court would apply to the Appellate Authority under Section 6-C as he was not a persona designata but a person ascertainable as a member of Class or as filling a particular character. It was further held in paragraph 11 that "the Sessions Judge though appointed as an Appellate Authority by the State Government was the Sessions Court constituted under the Code of Criminal Procedure and it being Court of inferior character in relation to the High Court, therefore, against the order made in exercise of powers conferred by Section 6-C of the Act, 1955 a revision application would lie to the High Court under Section 435 and 439 of the Code of Criminal Procedure, 1898". This judgment virtually clinches the issue as regards the questions referred to us.

23. Under Section 397 of Cr P C "the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court...". That the Court of Sessions is as an inferior Court to the High Court, cannot be disputed. Thus, the Court of Sessions before which an appeal has been prescribed under Section 29 of the Act, 2005 is a Criminal Court inferior to the High Court and, therefore, a revision against its order passed under Section 29 will lie

to the High Court under Section 397 Cr P C. Section 401 Cr P C is supplementary to Section 397 Cr P C.

23.1 Section 4 (2) Cr P C does not have any application to the present case. Since the Act, 2005 does not prescribe any special form of procedure either for the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 or for an appeal under Section 29, therefore, Section 5 is also not attracted.

23.2 In view of the above, as the remedy of an appeal had been provided under Section 29 of the Act, 2005 before a Court of Sessions, which means a Court of Sessions referred under Section 6 read with Sections 7 and 9 of the Cr P C, without saying anything more as regards the procedure to be followed in such appeal, and there being nothing to the contrary in the Act of 2005 which may be indicative of exclusion of the application of the provisions of Cr P C to such an appeal, the normal remedies available against a judgment and order passed by a Court of Sessions by way of appeals and revisions prescribed under the Cr P C before the High Court, are available against an order passed in appeal under Section 29 of the Act, 2005.

24. The Single Judge Benches of this Court in the case of **Nishant Krishan Yadav** (supra) and **Mrs. Manju Sree Robinson** (supra) have erred in holding that such a criminal revision is not maintainable

before the High Court. The judgment in **Chiranjeev Kumar Arya** (supra) against which the Special Leave Petition has been dismissed by the Supreme Court on 12.08.2016 and the judgment in **Prabhunath Tiwari** (supra*)* lay down the law correctly.

25. In the result, we answer the first question in the affirmative holding that the decisions in *Nishant Krishna Yadav* (supra) and *Manju Shree Robinson* (supra) do not lay down the law correctly. In other words, we hold that a revision under Section 397/401 of Cr P C against a judgment and order passed by the Court of Sessions under Section 29 of the Act, 2005 is maintainable and that the decisions in *Nishant Krishna Yadav* (supra) and *Manju Shree Robinson* (supra) do not lay down the law correctly.

Reference is answered, accordingly.

Registry is directed to place the Criminal Revision No.582 of 2016 before learned Single Judge for hearing on merits.

Date:27th October, 2016

RKK/-

(Dilip B Bhosale, CJ)

(A N Mittal, J)

(Rajan Roy, J)